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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MAUREEN FLAHERTY,

Plaintiff and Respondent,

v.

VINCENT JORDAN,

Defendant and Appellant.

B206526

(Los Angeles County
Super. Ct. No. BC311250)

ORDER MODIFYING OPINION AND
DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on February 9, 2009, be modified as follows:

1. Starting on page 6 and ending on page 7, the last full paragraph, beginning “Jordan also argues that Flaherty failed to comply with Section 417.10, subdivision (a)” and ending with the citation, “(*City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 1126 Cal.App.4th 668, 685.)” is deleted. In its place, we add a new subheading No. 3 and four paragraphs, as follows:

3. *The Proof of Service of the Statement of Damages Complied With Sections 425.11,*

Subdivision (d)(1), 417.10, Subdivision (a), and 415.20, Subdivision (b)

Jordan argues that Flaherty failed to comply with the requirement in section 425.11, subdivision (d)(1)¹ that service of a statement of damages on a party who has not appeared in the action must be made in the same manner as a summons.

Jordan's motion to vacate default and default judgment did not raise this issue. Jordan's reply to plaintiff's opposition questioned the validity of the proof of service, without identifying it as violating section 425.11, subdivision (d)(1). Assuming that he can raise this issue on appeal, we reject the claim.

Section 417.10, subdivision (a) requires that proof that a summons was served on a person must be made, "[i]f served under Section 415.10, 415.20, or 415.30, by the affidavit of the person making the service showing the time, place, and manner of service and facts showing that the service was made in accordance with this chapter. The affidavit shall recite or in other manner show the name of the person to whom a copy of the summons and of the complaint were delivered, and, if appropriate, his or her title or the capacity in which he or she is served."

We have affirmed the trial court's finding that service of the statement of damages complied with section 415.20, subdivision (d). The question then is whether the *proof of service* of the statement of damages complied with section 417.10, subdivision (a). The affidavit of Bob Schultz, which was the proof of service of the statement of damages filed on July 23, 2004, stated that on July 14, 2004, at 4:35 p.m. Schultz left copies of statement of damages with Jane Doe, bartender, at 210 Promenade North, Long Beach, California, and informed her of the general nature of the papers. Schultz's affidavit further stated that on July 16, 2004, he mailed copies of the statement of documents to

¹ Referring to the statement setting forth the nature and amount of damages being sought, section 425.11, subdivision (d)(1) states: "(d) The statement referred to in subdivision (b) shall be served in the following manner: (1) If a party has not appeared in the action, the statement shall be served in the same manner as a summons."

Vincent Jordan at 210 Promenade North, Long Beach, California. The proof of service satisfies the requirements of sections 417.10, subdivision (a) and section 415.20, subdivision (b).

There is no change in the judgment.

Appellant's petition for rehearing is denied.